

Hospitals Sue Trump to Keep Negotiated Prices Secret

The administration wants to require hospitals to reveal the rates they privately negotiate with insurers for all sorts of procedures, amid the public outcry over surprise medical bills.



By Reed Abelson

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The nation's hospital groups sued the Trump administration on Wednesday over a new federal rule that would require them to disclose the discounted prices they give insurers for all sorts of procedures.

The hospitals, including the American Hospital Association, argued in a lawsuit filed in United States District Court in Washington that the new rule "is unlawful, several times over."

They argued that the administration exceeded its legal authority in issuing the rule last month as part of its efforts to make the health care system much more transparent to patients. The lawsuit contends the requirement to disclose their private negotiations with insurers violates their First Amendment rights.

"We make the case that the burden placed on our members to come up with this information is extensive," Tom Nickels, an executive vice president with the American Hospital Association, said in an interview.

The administration wanted the disclosure rule, which would go into effect in 2021, to allow patients to better shop for deals on a range of services, from M.R.I.s to hip replacements.

"Hospitals should be ashamed that they aren't willing to provide American patients the cost of a service before they purchase it," Caitlin Oakley, a spokeswoman for the Department of Health and Human Services, said in an emailed statement. "President Trump and Secretary Azar are committed to providing patients the information they need to make their own informed health care decisions and will continue to fight for transparency in America's health care system."

While the administration already requires hospitals to post some of their list prices, the public outcry over surprise medical bills and high out-of-pocket costs led the administration to seek even more detail on the discounted prices that are kept secret between hospitals and insurers.

Patients have long complained that they are completely in the dark about what a doctor's visit or surgery will cost until after they receive the bill. Knee surgery, for example, can cost thousands of dollars more at one hospital than at another in the same region.

The administration clearly anticipated a legal challenge. In fact, when he announced the hospital price disclosure rule, Alex M. Azar II, the health and human services secretary, was adamant that the rule would withstand a court challenge. "We may face litigation, and we feel we are on a very firm legal footing," he said last month.

"H.H.S. has been willing under this administration to test the limits of their authority, that would subject them to more litigation," said Emily J. Cook, a health care lawyer in Los Angeles. While her firm is not representing any of the plaintiffs in the lawsuit, one of them is a client, she said.

At the heart of the administration's efforts is an attempt to tackle rising hospital costs, which have outpaced the increase in physician prices, according to a recent study by health economists in Health Affairs. The economists estimated that hospital inpatient prices increased 42 percent from 2007 to 2014.

In an op-ed article published in The Chicago Tribune on Tuesday, Seema Verma, the administrator for the Centers for Medicaid and Medicare Services, promoted the administration's efforts to benefit patients.

"The decades-long norm of price obscurity is just fine for those who get to set the prices with little accountability and reap the profits, but that stale and broken status quo is bleeding patients dry," she wrote. "The price transparency delivered by these rules will put downward pressure on prices and restore patients to their rightful place at the center of American health care."

The hospital groups, which also include the Association of American Medical Colleges, the National Association of Children's Hospitals and the Federation of American Hospitals, which represents for-profit hospitals, argued in the lawsuit that the rule would not accomplish the administration's aim of helping consumers avoid surprise bills. Three individual hospitals also joined the case.

"America's hospitals and health systems remain committed to providing patients with the information they need to make informed health care decisions," the lawsuit said. It contended that the rule "will generate confusion about patients' financial obligations, not quell it." The lawsuit was first reported by The Wall Street Journal.

The Trump administration has also proposed a rule requiring insurers to allow patients to get advanced estimates of their out-of-pocket costs ~~before~~ they see a doctor or go to the hospital. The industry's major trade associations wrote a letter on Tuesday, requesting an additional 90 days to comment on the proposal, pushing the deadline to mid-April.

"The sheer volume of data that the government is proposing health plans disclose is staggering — dollar amounts for every single item or service, for every single provider and facility, for every single individual and employer plan," wrote executives from America's Health Insurance Plans and the Blue Cross Blue Shield Association.

The administration's efforts to push the industry to make more information public to patients faces a real legal challenge, and it has been unsuccessful in other attempts.

When the administration earlier tried to require pharmaceutical companies to disclose the list price of prescription drugs in television ads, the drug companies argued that the Department of Health and Human Services had exceeded its regulatory authority and that the requirement also violated its First Amendment rights. A federal judge ruled last summer that H.H.S. had, in fact, exceeded its regulatory authority with the rule, which was seen as largely symbolic because list prices are not what patients typically pay. The decision is under appeal.

The hospitals have also been successful to date in other cases arguing that the agency lacks the authority to issue payment rules, said Ms. Cook, although the government could also win those cases on appeal.

The courts are displaying less deference to rule making by government agencies, said Douglas Hallward-Driemeier, a lawyer in Washington who works with clients to challenge administrative actions.

The hospitals could also succeed by raising First Amendment grounds, he said. "That argument has gained a lot of traction over last 10 years," he said.

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